

Supreme Court, U. S.
FILED
JUN 6 1977
MICHAEL RODAK, JR., CLERK

APPENDIX.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976.

No. 76-750

SEARS, ROEBUCK AND CO.,

Petitioner,

VS.

SAN DIEGO COUNTY DISTRICT COUNCIL
OF CARPENTERS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF CALIFORNIA

PETITION FOR CERTIORARI FILED DECEMBER 1, 1976
CERTIORARI GRANTED FEBRUARY 28, 1977

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976.

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SEARS, ROEBUCK AND CO.,

Petitioner,

vs.

SAN DIEGO COUNTY DISTRICT COUNCIL
OF CARPENTERS,

Respondent.

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APPENDIX

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO.

Sears Roebuck & Company,
Plaintiff,
vs.

San Diego County District Council of
Carpenters, and Does 1 through 100,
Defendants.

No. 347511

COMPLAINT FOR INJUNCTION (CONTINUING TRESPASS)

Plaintiff alleges:

I.

Plaintiff, Sears Roebuck & Company (hereinafter referred to as "Plaintiff") is and at all times pertinent was a corporation duly organized and existing under and by virtue of the laws of the State of New York, with places of business in the State of California and other states.

Plaintiff is and at all times mentioned was engaged in the operation of a retail department store at 555 5th Avenue, Chula Vista, San Diego County, California.

II.

Defendant, San Diego County District Council of Carpenters (hereinafter referred to as "Carpenters") is and at all times mentioned was a labor organization within the meaning of the National Labor Relations Act, as amended, and is organized for the purpose of negotiating terms and conditions of employment on behalf of the employees it represents and for the purpose of representing employees in collective bargaining, all within the County of San Diego, California.

III.

DOES 1 through 100, inclusive, are labor organizations or are members, officers or agents of one or more of said labor organizations or of Carpenters. Plaintiff does not know the true names and capacities of the organizations and individuals sued herein as DOES, and pursuant to the California Code of Civil Procedure, Section 474, Plaintiff will amend its complaint to show the true names and capacities of these fictitious defendants when those names have been ascertained by Plaintiff at or before the time of trial or hearing.

IV.

Commencing at approximately 10:00 a.m. on October 26, 1973, Defendants, their agents, representatives, officers, picket captains, pickets and other persons acting under the direction, control and at the invitation of the Defendants, authorized, established and caused to be established and assisted in and sanctioned and at all times maintained and do now maintain picket lines on and about the property of Plaintiff's facility as herein-after alleged. Said picket lines have been established and now are and at all times herein mentioned have been maintained.

V.

Attached hereto and made a part hereof by this reference as though set forth at length herein, is Exhibit A which constitutes a schematic drawing of Plaintiff's retail department store and property located at and about 555 5th Avenue, Chula Vista, San Diego County, California. Said picket line has been maintained and is now maintained on the private property of Plaintiff at said location. Said location and property of Plaintiff is for the exclusive use of Plaintiff, its customers, employees, agents, and suppliers, and no business is maintained on said property that is not operated or controlled by Plaintiff.

VI.

On October 26, 1973, shortly after said picket line was established on Plaintiff's property, Plaintiff did notify the pickets and Defendants that said pickets were on the private property of Plaintiff and Plaintiff demanded that said pickets leave said property immediately. Said pickets did leave the property upon Plaintiff's demand, but returned in a short time on the same day, October 26, 1973. Upon the return of the pickets, Defendants informed Plaintiff that said pickets of Defendants would remain on the private property of Plaintiff unless and until ordered to leave by a court of law. Defendants continued to maintain and do now maintain said picket lines as alleged on the said private property of Plaintiff.

VII.

Defendants have access to the public sidewalks adjacent to the said property of Plaintiff where said pickets could patrol in the full view of the employees, customers, and suppliers of Plaintiff; Defendants have chose not to use said public sidewalks, but rather have continued to maintain said picket line on the private property of Plaintiff despite the objections of Plaintiff.

VIII.

Said pickets, pursuant to the instigation and direction of Defendants, have attempted to dissuade customers of Plaintiff from doing business with Plaintiff, and Plaintiff is informed and believes and based thereon alleges that customers of Plaintiff have refused to shop at Plaintiff's department store because of the statements of said pickets and because of the presence of said pickets on the private property of Plaintiff.

IX.

Plaintiff is informed and believes and based thereon alleges that Defendants and each of them, and other diverse persons unknown to Plaintiff have conspired together in concert to commit the unlawful acts against Plaintiff of interfering with Plaintiff in the lawful conduct of its business and engaging in continuing trespass onto the property of Plaintiff. Each of the acts complained of herein has been done in furtherance of said conspiracy.

X.

The Defendants, and each of the [sic], have performed and continue to perform the acts and things herein complained of deliberately, willfully and intentionally, with the full knowledge of the illegality of said acts and for the purpose of injuring Plaintiff in the conduct of its business. Plaintiff is informed and believes and upon such information and belief alleges that Defendants, and each of them, will continue to do the acts complained of herein unless restrained and enjoined from doing so by this court.

XI.

Each and every act herein complained of was done maliciously, unlawfully, and oppressively and with the intention to injure, vex, harass and annoy Plaintiff in the conduct of its business.

XII.

The acts of Defendants complained of herein have caused, are causing and will continue to cause so long as said acts are continued, irreparable damage to Plaintiff. As a direct and sole result of said acts, Plaintiff's goodwill has been, is being, and so long as the acts complained herein continue will be seriously impaired. The amount of monetary damages to Plaintiff's business

as a result of the acts of Defendants complained of herein is extremely difficult, if not impossible, to ascertain. Further monetary and other damage to Plaintiff's business as a direct result of said acts complained of herein can only be prevented by the granting of injunctive relief prayed for herein.

XII.

Unless restrained by this court, Defendants will continue the said acts continuously or intermittently and will continue to cause the injuries hereinabove referred to, and will cause said injuries before the matter can be heard on notice. Plaintiff has no plain, speedy or adequate remedy at law, and the restraint of this court is necessary to prevent a multiplicity of judicial proceedings concerning the continuing trespass of Defendants.

WHEREFORE, Plaintiff prays judgment as follows:

1. That Defendants, and each of them, their officers, agents, representatives, members, and all others acting for, on behalf of, or in concert with them, or any of them, be permanently enjoined from causing, instigating, furthering, participating in, or carrying on picketing on the Plaintiff's property located at 555 5th Avenue, Chula Vista, California, which property is bounded by and adjacent to public sidewalks on 5th Avenue, H Street, and I Street in Chula Vista, California.

2. That an order be made directing the Defendants, and each of them, to show cause at a time and place specified therein why they, and each of them, their officers, agents, representatives, members, and all others acting for, on behalf of, or in concert with them, or any of them, should not be enjoined and restrained from causing, instigating, furthering, participating in, or carrying on picketing on the Plaintiff's property located at 555 5th Avenue, Chula Vista, California, which property is bounded by and adjacent to public sidewalks on 5th Avenue, H Street and I Street in Chula Vista, California.

3. That the court, upon the ex parte application of the Plaintiff, and upon reading Plaintiff's verified complaint herein and the declarations annexed thereto, grant a temporary restraining order against Defendants, and each of them, their officers, agents, representatives, members, and all others acting for, on behalf of, or in concert with them, or any of them, from doing any of the acts set forth in paragraph 1 above, pending a hearing on the order to show cause re preliminary injunction herein.

4. For Plaintiff's costs of suit herein incurred.

5. For all other and further proper relief.

Gray, Cary, Ames & Frye

By: /s/ James K. Smith

James K. Smith

Dated: October 29, 1973

I, ROBERT D. WELLS, declare as follows:

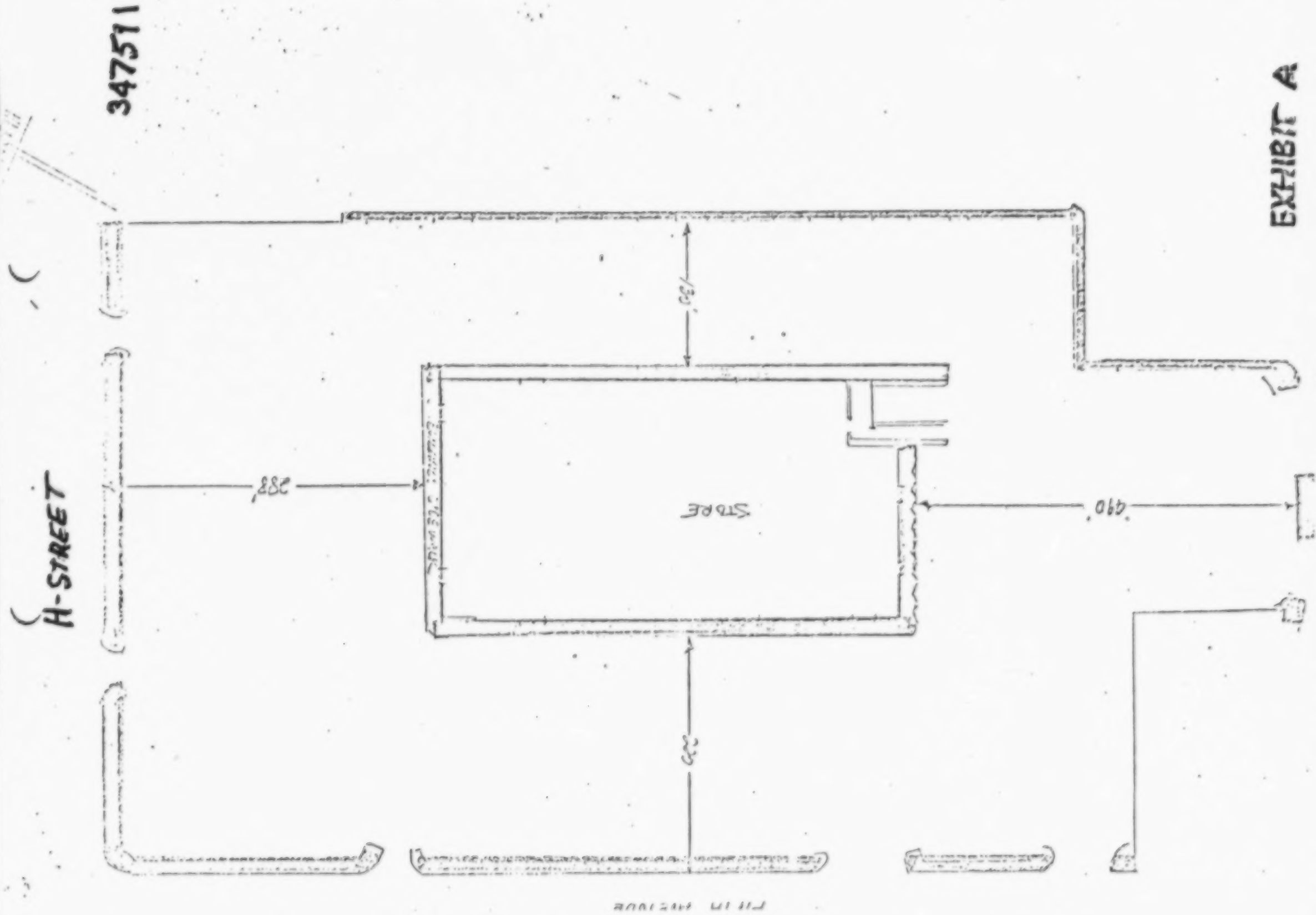
I am the Operating Superintendent of the Chula Vista Store of SEARS ROEBUCK & COMPANY, Plaintiff in the above-entitled matter; I am fully informed of the facts alleged in the within complaint; the same is true of my own knowledge except as to those matters as stated therein on information and belief and to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 1973.

/s/ Robert D. Wells

Robert D. Wells



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

DECLARATION OF KENNETH V. LAUHER, JR. IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE.

I Kenneth V. Lauher Jr., declare and say I am Credit Sales Manager at Sears, Roebuck and Co., Chula Vista # 1358, employed by Sears, Roebuck and Co., on October 26, 1973 I saw a man carrying a picket sign step into the path of an automobile and inquired of the occupants "Do you ladies intend shopping at Sears?" I did not hear their response, but the car had stopped. He then said "We would appreciate it very much if you would not." The car then proceeded.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego County, California on October 29, 1973.

/s/ Kenneth V. Lauher Jr.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

ORDER TO SHOW CAUSE AND TEMPORARY
RESTRAINING ORDER.

On reading the verified complaint of Plaintiff on file herein together with the declarations and exhibits attached thereto, and the memorandum of points and authorities submitted therewith, and it appearing to the satisfaction of the court that this is a proper case for granting an order to show cause and a temporary restraining order, and that unless the temporary restraining order prayed for in said complaint is granted, great and irreparable injury will result to Plaintiff before the matter can be heard on notice.

Now, THEREFORE, IT IS HEREBY ORDERED that the above-named Defendants, and each of them, appear before this court in the Department #11 thereof at the San Diego County Courthouse, 220 West Broadway, City and County of San Diego, California on the 12 day of December, 1973 at the hour of 1:30 P. M., then and there to show cause if any they have why they, and each of them, their officers, agents, representatives, members, and all others acting for, on behalf of, or in concert with them, or any of them, should not be enjoined and restrained during the pendency of this action from causing, instigating, furthering, participating in, or carrying on picketing on the Plaintiff's property located at 555 5th Avenue, Chula Vista, California, which property is bounded by and adjacent to public sidewalks on 5th Avenue, H Street and I Street in Chula Vista, California.

IT IS FURTHER ORDERED that pending the hearing and determination of said order to show cause, the Defendants, and each of them, their officers, agents, representatives, members and all others acting for, on behalf of, or in concert with them,

or any of them, shall be and they hereby are restrained and enjoined from doing any of the acts hereinabove set forth in the order to show cause.

Dated: Oct. 29, 1973.

(Illegible)

Judge of the Superior Court.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.
In and for the County of San Diego.

SEARS ROEBUCK & COMPANY,	}	No. 347511
<i>Plaintiff,</i>		
vs.		
SAN DIEGO COUNTY DISTRICT COUNCIL OF CARPENTERS, and DOES 1 through 100,	}	
<i>Defendants.</i>		

DECLARATION OF ELBRIDGE G. McCONNELL IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE.

I, Elbridge G. McConnell, declare and say:

I am the Security Manager of the retail department store owned by Plaintiff located at 555 5th Avenue, Chula Vista, California.

On October 24, 1973, at about 4:00 p.m., I was called to the customer service counter of the store. When I arrived at the counter two men introduced themselves to me as business representatives of the Carpenters' Union. One of the two men told me his name was Dallas Roose, and I believe that the other man was introduced as Floyd Cain. Mr. Roose asked me who was doing the work of remodeling the women's fashions department of the store. I told him it was being done by employees of Plaintiff. He asked if he could talk to someone at the store about members of the Carpenters' Union doing the work of remodeling at the store. I told the two business representatives that they should speak to the Store Manager, Mr. J. L. Ochoa, about that subject. I then took the two men to Mr. Ochoa and introduced them to him.

On October 26, 1973, at about 8:30 a.m., I was told that five pickets were about to enter the parking lot of the Plaintiff's

Chula Vista Store. I went to the parking lot areas and saw five pickets patrolling on the store parking lot areas immediately adjacent to the walkways next to the store building. Each picket carried a sign which read in substance:

I am an AFL-CIO Picket.

Sanctioned by the Carpenters' Trade Union.

The pickets were walking in the store parking lot next to the walkways on the west, north, and east side of the store building.

I and my assistant, Dean Cochran, contacted each of the five pickets. We told each of the pickets that they were on the private property of the Plaintiff, and that they did not have permission to picket on that private property. We told each of them that the sidewalks on the outer perimeter of the store parking lot fronting 5th Avenue, H Street, and I Street were public sidewalks. We asked each of the pickets to leave the property of Plaintiff, and suggested that they continue their picketing on the public sidewalks abutting the Plaintiff's property. Three of the five pickets left the private property of the Plaintiff when first requested and began picketing on the public sidewalks on 5th Avenue and H Street. The other two pickets did not leave until about five minutes after they were told to do so, but then joined the other three pickets and also patrolled on the public sidewalks on 5th Avenue, and H Street.

After all five pickets had left the Plaintiff's property, I observed one of the pickets go to a public phone booth. Shortly thereafter I observed that same picket leave the phone booth and approach each of the other pickets.

At about 9:30 a.m. on the same day, October 26, 1973, I observed the five pickets return to the private property of the store and again patrol with the picket signs on the parking area immediately adjacent to the walkways on the west, east, and north sides of the store. At about that same time, I saw an automobile drive into the parking area, stop, and one of the passengers spoke to the pickets. The automobile parked on a

parking roadway adjacent to the walkway on the west side of the building. I recognized one of the men in it as the Carpenters' business representative with whom I had spoke two days' before, Mr. Roose.

I approached the automobile and spoke with Mr. Roose. I told him that his pickets were on private property and requested that he direct them to leave the plaintiff's property and picket on the public sidewalk. Mr. Roose said that the parking area of Plaintiff's store was a public thoroughfare and his pickets did not have to leave. I again requested that the business representatives remove the pickets from the private property of Plaintiff. Mr. Roose then said that the pickets would not leave the store property unless legal action compelled them to leave.

Pickets remained on the store property throughout the remainder of the business day on Friday, October 26, 1973, and picketing was conducted on the store property at the same locations as referred to above during store business hours on Saturday, Sunday, and today, October 27, 28, and 29.

Posted at numerous locations in the parking lot of the Sears Chula Vista Store are signs stating that solicitation and distribution of handbills is prohibited without prior permission of the store manager. These signs have been conspicuously posted since at least 1967. The policy of Sears concerning solicitation and distribution as posted has been enforced since I have been employed by Plaintiff. Plaintiff has permitted solicitation and distribution of literature on its property only in a few cases; the only instances of permitted solicitation and distribution on Plaintiff's property have been involving the Lion's Club white cane drive, Salvation Army at Christmas only, and the League of Women Voters for voter registration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 1973, at San Diego, California.

/s/ ELBRIDGE G. McCONNELL
Elbridge G. McConnell

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

DECLARATION OF J. L. OCHOA IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION.

I, J. L. OCHOA, declare and say:

I am the Store Manager of the Chula Vista retail store of Sears Roebuck & Company. I have held that position since October of 1965. This store opened for business in February of 1966. Sears Roebuck & Company has owned the property on which the store and parking facilities are located since prior to my becoming manager in October of 1965.

The Sears Roebuck & Company retail store is the only retail operation conducted on the property depicted in Exhibit "A" to the complaint which is filed herein. The property is surrounded on three sides by public sidewalks and public streets. On the fourth side of the block there are private residences separated from the store by a concrete block wall. The store contains approximately 250,000 square feet. The parking lot contains approximately 1,000 spaces for the parking of automobiles. The parking lot is maintained and controlled solely for the use of customers of Sears Roebuck & Company.

The pedestrian walkways and sidewalks in and around the parking lot and immediately adjacent to the store are maintained solely for the use of customers of Sears Roebuck & Company. There are "Stop" signs located on the sidewalk and parking lot. These "Stop" signs are identical in appearance to those used by the City of Chula Vista on the adjacent public streets. These "Stop" signs were purchased at my direction by Sears Roebuck & Company and were installed at the Company's expense. They are owned and maintained by Sears Roebuck & Company. Additionally, the Company has purchased and installed "No Parking" signs along the curb edge of the side-

walk adjacent to the store. I do not believe these signs are identical in appearance to those utilized on the public streets by the City of Chula Vista. All of these signs are the property of Sears Roebuck & Company and were purchased and installed at the Company's expense approximately two to three years ago.

Additionally, a United States Post Office mailbox is located on the sidewalk adjacent to the store. Soon after the store opened the Post Office requested permission of Sears Roebuck & Company to place one mailbox on the sidewalk. Sears Roebuck & Company granted permission for that mailbox to be placed on the sidewalk for the convenience of its customers. The United States Post Office owns and maintains that mailbox.

The curbs adjacent to the sidewalks surrounding the store are painted red with the exception of a limited area on the rear portion of the store which is yellow and marked for "Fifteen Minute Parking". The "Fifteen Minute Parking" area is for Sears Roebuck & Company customer pickup. Sears Roebuck & Company painted and maintains these curbs.

In the general vicinity of the Chula Vista store there are various other retail businesses. All of these businesses are separated from the Sears Roebuck & Company retail store by public sidewalks and streets. Each of them maintains, or have maintained for them, their own separate parking facilities for the benefit of their customers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 12, 1973 at San Diego, California.

/s/ J. L. Ochoa
J. L. Ochoa

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

DECLARATION OF FLOYD CAIN

I, FLOYD CAIN, declare:

I am a business representative for the San Diego District Council of Carpenters and the United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Local 1571 is a labor organization which represents its members with regard to wages, hours and working conditions.

I have been a member of Local 1571 which is a carpenter's union affiliated with the District Council, since 1951 and I have been a business representative of the District Council since May, 1973.

On or about October 28, 1973, one of the members of the District Council told me that Sears Roebuck & Company was performing carpenters work in their Chula Vista store. It is part of my job as a business representative for the District Council to insure that all work performed within the carpenter classification as that term is used in our International Constitution and our Collective Bargaining Agreement is performed pursuant to dispatch from the hiring union halls named by the District Council and its local affiliates.

Accordingly, I viewed the premises of the Sears Roebuck & Company store at Chula Vista on October 24, 1973, to determine whether or not such work was being performed. At that place and time I observed the erection of platforms and other wooden structures by persons who had not been dispatched from our hiring halls. All of the work which I observed is covered by our master agreement by building construction in the Building Trades Council of San Diego County and all other work falls into the journeymen carpenter classification.

Later that same day I met Joe Ochoa, manager of the Chula Vista store. I introduced myself and explained to him that the work being performed was carpenter work and that the particular carpenter at the job had not been dispatched by our hiring halls and that other workers performing other work at their store were clerical workers in the store by their own admission.

I was accompanied by Dallas Roose, business representative for the District Council and financial secretary of Local 1490, another local affiliate of the District Council.

Mr. Roose and I asked Mr. Ochoa either to contract the work through a bona fide building trades contractor who would in turn utilize qualified and dispatched carpenters to perform the carpenter work in question; or in the alternative to sign a short form agreement which would require Sears to abide by the terms of the master contract agreement with regard to the dispatch and use of carpenters in completing the construction on that job.

Mr. Ochoa said he would look into that matter and let us know the very next day.

Before leaving we also pointed out that many of our members patronized that store and lived in that area and were out of work and we requested his cooperation.

Mr. Ochoa never advised me of their position and although I made a minimum of two telephone calls on the following day, none of them were returned and I was ultimately advised that Mr. Ochoa would be out of town until the following Monday.

Upon being so advised, I reported this information to Dallas Roose. The decision was then made by Mr. Roose to authorize the publicizing by the District Council of the fact that Sears Roebuck & Company was undercutting prevailing standards for the employment of carpenters by the establishment of pickets at the premises of the store.

Subsequently, authorization was obtained by Mr. Roose for sanction by the San Diego County Building Trades Council

sanctioning the picketing by the District Council as bona fide, legitimate and proper in all respects under the standards for pickets set by the AFL-CIO and its affiliates throughout the country.

Mr. Roose and I have relocated the pickets in accordance with the temporary restraining order as soon as we learned it had been issued. However, the pickets are now anywhere from one hundred-fifty to two hundred feet from the Sears building at which the work is being performed and in some cases much farther than that.

On Thursday, November 8, 1973, I took pictures pursuant to direction of legal counsel, from various angles of the Sears building and appurtenant structures including state traffic signs and a U. S. Mailbox, all of which are located on the sidewalk around the Sears store. Copies of those pictures are attached hereto, marked Exhibits "A" through " ", and incorporated herein by this reference.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 12, 1973.

/s/ Floyd Cain
Floyd Cain

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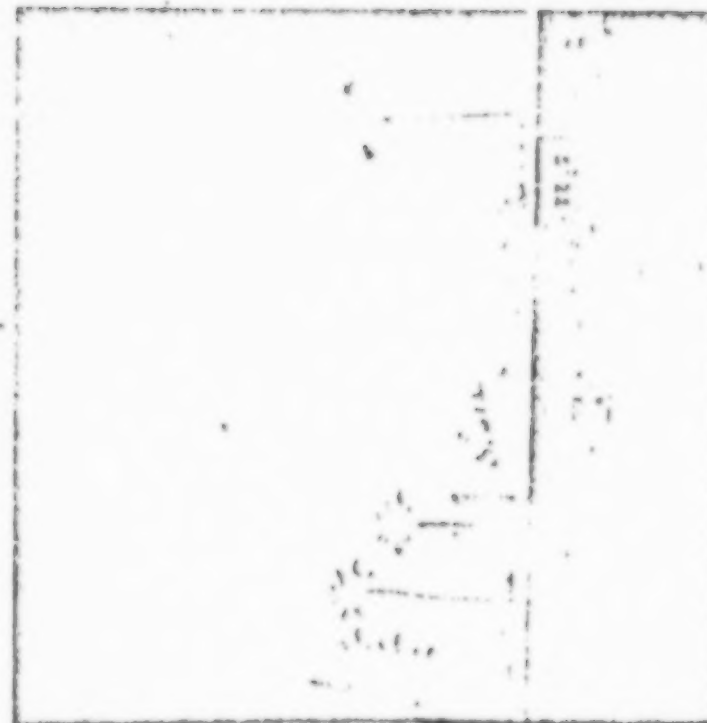
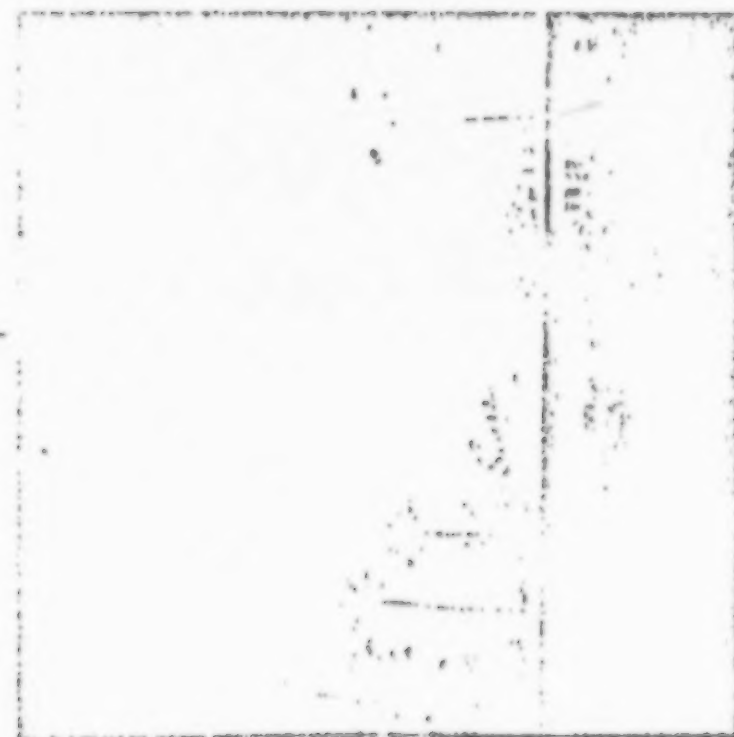


EXHIBIT "A"

BEST COPY AVAILABLE

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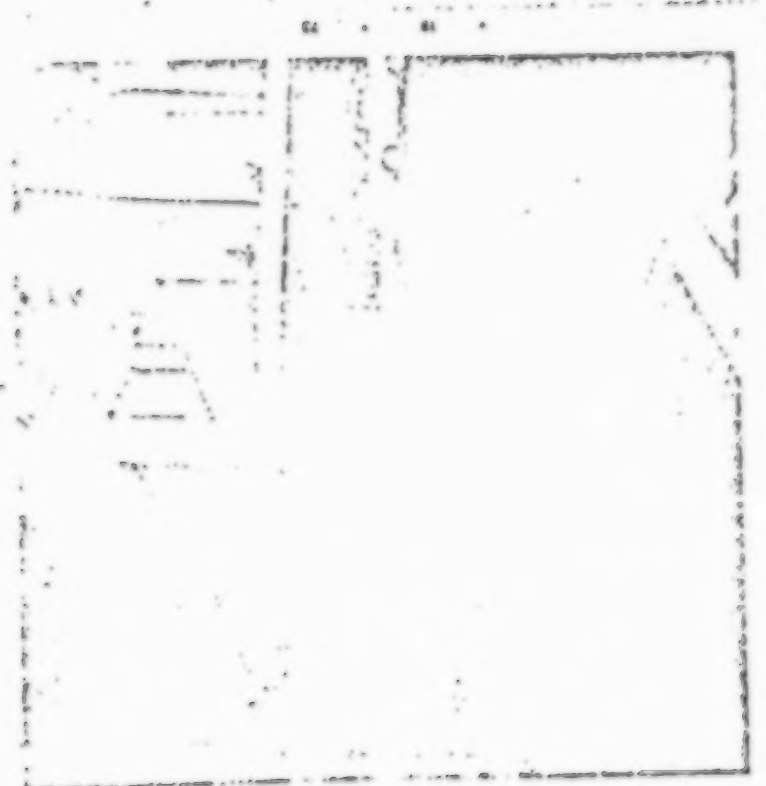
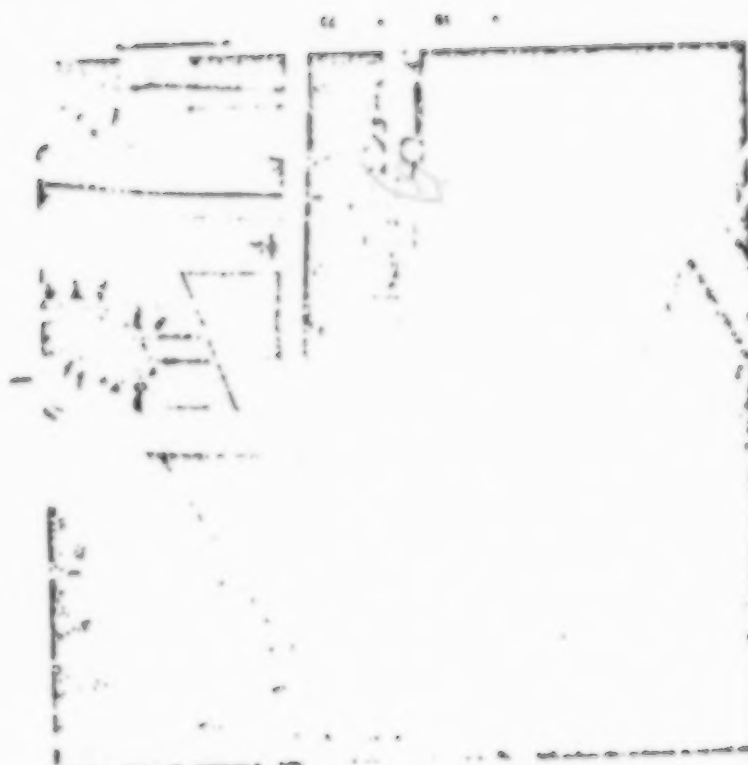


EXHIBIT "B"



41



EXHIBIT "C"

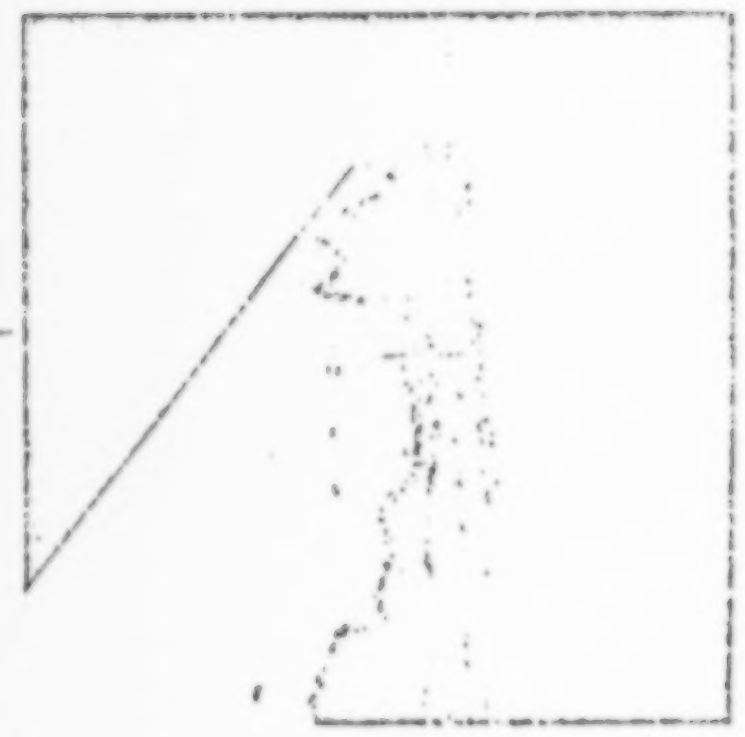


42



24

EXHIBIT "D"



43

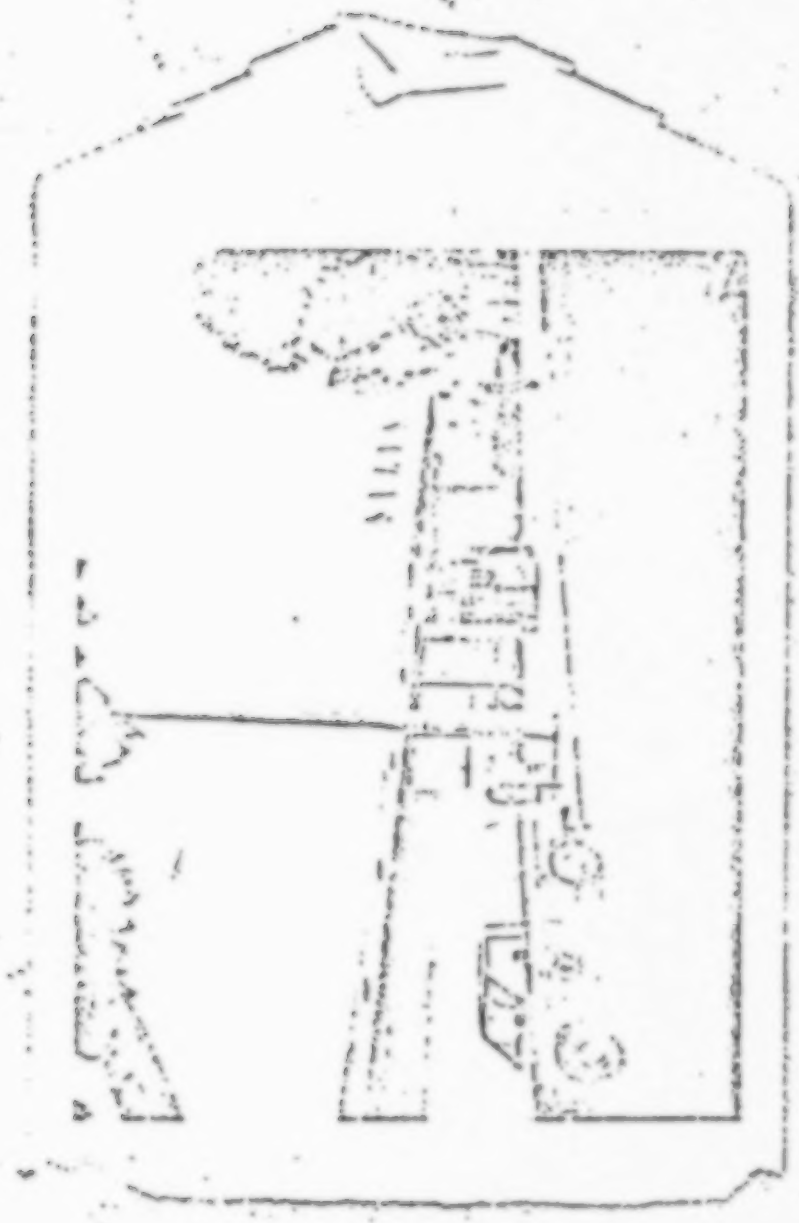


EXHIBIT "E"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

DEMURRER TO COMPLAINT.

(C. C. P. Section 430)

Defendant, SAN DIEGO COUNTY DISTRICT COUNCIL
OF CARPENTERS demurs to the Complaint herein on the
following grounds:

I.

The Court has no jurisdiction over the subject matter of this
action.

(C. C. P. Section 430.10(a))

II.

The Complaint does not state facts sufficient to constitute
a cause of action.

(C. C. P. Section 430.10(f))

WHEREFORE, Defendant prays that its Demurrer be sustained,
that the Temporary Restraining Order be vacated, and that
Defendant have judgment for its costs and for all other proper
relief.

I hereby certify that this Demurrer is filed in good faith, is
not filed for the purpose of delay, and that in my opinion the
grounds are well taken.

Dated: November 12th, 1973.

BRUNDAGE, WILLIAMS & ZELLMANN

By: /s/ Jerry J. Williams

Jerry J. Williams

Attorney for Defendants

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

DECLARATION OF DALLAS V. ROOSE

I, DALLAS V. ROOSE, declare:

I am a business representative for the San Diego District Council of Carpenters (hereinafter referred to as the District Council of Carpenters) and the United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

On October 29, 1973, I was informed that a temporary restraining order was issued against the District Council of Carpenters, said order requiring that I remove the picket line located at Sears and Roebuck, which is located in Chula Vista, to the outside public sidewalk which encircles the Sears Store.

I immediately complied with the terms of the Temporary Restraining Order.

Because the picketing was restricted to the outer sidewalk, the picketing became totally ineffective.

For that reason, I had to totally withdraw the pickets from the Sears Store. From November 12, 1973, to the present, there has been no further picketing of the Sears Store in Chula Vista by the District Council of Carpenters.

The only way our picketing can be effective is by placing said pickets as close to the non-union work as possible. This means that our pickets must be allowed *on* the sidewalk immediately adjacent to the building which houses the Sears Store.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 15, 1973.

/s/ Dallas V. Roose
Dallas V. Roose

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

SUPPLEMENTAL DECLARATION OF J. L. OCHOA—
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION.

I, J. L. OCHOA, declare and say:

I am the Store Manager of the Chula Vista retail store of Sears Roebuck & Company. I have held that position since October of 1965. This store opened for business in February of 1966. Sears Roebuck & Company has owned the property on which the store and parking facilities are located since prior to my becoming manager in October of 1965. As Store Manager of the Chula Vista retail store I am fully cognizant of its operations and labor relations.

Subsequent to the service of the temporary restraining order on October 29, 1973, issued by this Court, on the Defendant, San Diego County District Council of Carpenters, the pickets on October 30, 1973 complied with the terms of the temporary restraining order by removing themselves to the public sidewalks on the perimeter of the plaintiff's private property. Those pickets continued to picket on the public sidewalks through November 12, 1973. Since that date they have not returned.

There are no walls, fences, berms or other obstructions adjacent to the public sidewalks which would result in the pickets not being visible to customers, employees or suppliers of Sears Roebuck & Company. In fact, the pickets, while located on the public sidewalk, are in complete view of all customers, employees and suppliers entering or leaving the private property of Sears Roebuck & Company through one of the driveways.

It has come to my knowledge that the picketing of defendant on the public sidewalks in compliance with the temporary restraining order has resulted in the following incidents:

1. On November 2, 1973 a telephone repairman dispatched by Pacific Telephone and Telegraph Company refused to enter upon the private property of Sears Roebuck & Company as a result of defendants pickets.

2. On November 5, 1973 a delivery truck dispatched by Maremont Marketing refused to cross defendant's picket line on the public sidewalk. This delivery truck was to deliver mufflers and other automotive parts to the Sears Roebuck & Company store.

3. On November 12, 1973, a contractor, Cal-Gon, was on the private property of Sears Roebuck & Company installing a vapor recovery system on the gasoline dispensing pumps located on the Sears Roebuck & Company property. As a result of defendant's pickets on the public sidewalks the employees of that contractor refused to make such installation and left the premises of Sears Roebuck & Company.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 16, 1973 at San Diego, California.

/s/ J. L. Ochoa
J. L. Ochoa

Reporters' Transcript of November 16, 1973, at pages 17, and 29-30:

[17] to read the pickets—or pay attention to what's on the picket sign in terms of entering or ingress or egress from the shopping center itself.

But more to the question of whether or not Sears Roebuck is dedicated to the public use is evidenced by pictures attached in the affidavit of Mr. Cain, a business agent for the District Council of Carpenters. One picture clearly demonstrates the post office—or, pardon me, a mailbox right out there on the sidewalk, which is immediately adjacent to the building. The sidewalk is a rather wide sidewalk. I have pictures here to demonstrate to your Honor, if you would like me to send those up.

David, I have another batch.

THE COURT: Here you are.

MR. MANNING: He's got one Polaroid of the mailbox. We couldn't get it duplicated. The point we are making, your Honor, is that certainly plaintiff was not asserting that only customers of Sears Roebuck come in and use that post office box. I think that various of the incidents involved here, namely, the stop sign, does have the same shape. I'm sure the customers don't know whether or not, by and large, as laymen, whether or not Sears maintains it or whether the public maintains it.

But the fact does remain that they are inviting the public at large to shop, to mill around or even to mail a letter for that purpose. So I think we are to the point that. . . .

* * * * *

[29] . . . or the greatest amount of people who are going to use the services of someone with which the union has a dispute, a bargaining dispute or a labor dispute of any type. These gentlemen have stood on the picket. They have seen that the people cannot see their signs. They are prepared to testify to that and they are prepared to testify concerning various other delivery trucks that don't see the signs at all, that can go through with-

out, you know, seeing the signs because of the traffic situation. I want that clear to the Court.

Thank you.

THE COURT: All right. Like all courts I have to follow the law. I don't make the law in the lower court. I think Central Hardware is an impressive case that seems to set out the situation.

What I don't like about it, I can conceive of a situation, as I told you earlier, where you could have a store like Sears Roebuck with a half mile of public parking, which would make picketing ineffective and I think really destroy the First Amendment rights.

When I was asking the question about how many doors you had, your diagram here that you give just shows one door, and I thought that maybe we could reach a point where you could put just one picket up there by the door and limit it.

MR. GEERDES: I believe that's just the loading dock, your Honor.

THE COURT: I think that I will have to find that this [30] is not industrial property; that P. C. 552.1 limits this right to enter to industrial property; that it is private property, and that a preliminary injunction will be granted. Picketing will be limited to the public sidewalks of Sears Roebuck.

Again I say that I don't like the decision, but I am bound by it. I think that there should be some latitude given when there is size, but your citations you give me indicate that size is not the controlling factor in these cases.

MR. GEERDES: Your Honor, would a minimum bond be acceptable?

THE COURT: I suppose—

MR. GEERDES: There is no evidence.

THE COURT: No evidence as to violation. Everything has been quiet, orderly. What do you want? A thousand dollars?

MR. GEERDES: Fine. We will post it. Thank you.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

UNDERTAKING UNDER SECTION 529 C. C. P.

WHEREAS, the above named Plaintiff desires to give an undertaking for Preliminary Injunction as provided by Section 529 C. C. P.

NOW, THEREFORE, the undersigned Surety, does hereby obligate itself, jointly and severally, to the above named Defendants under said statutory obligations in the sum of ONE THOUSAND AND NO/100 Dollars (\$1,000.00).

In testimony whereof, the said Surety has caused its corporate name and seal to be hereunto affixed by its duly authorized officer.

Signed, sealed and dated this 20th day of November, 1973.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
Bond No. 8716383

The premium charge for this bond is \$20.00 Dollars per annum.

By /s/ Robert E. Mark
Robert E. Mark
Attorney-in-Fact

STATE OF CALIFORNIA, {
COUNTY OF SAN DIEGO, } ss.

On November 20th, 1973, before me, the undersigned, a Notary Public of said county and state, personally appeared ROBERT E. MARK, known to me to be the Attorney-in-Fact of the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

/s/ Eunice Bolash

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

PRELIMINARY INJUNCTION

Pursuant to this Court's order granting a preliminary injunction, and the plaintiff's filing an undertaking approved by this Court in the sum of \$1,000.00;

IT IS HEREBY ORDERED that during the pendency of this action, or until the final determination thereof, or until the Court shall otherwise order, defendants, and each of them, their officers, agents, representatives, members, and all others acting for, on behalf of, or in concert with them, or any of them, and their attorneys, shall be, and hereby are enjoined and restrained from causing, instigating, furthering, participating in, or carrying on picketing on the plaintiff's property located at 555 5th Avenue, Chula Vista, California, which property is bounded by and adjacent to public sidewalks on 5th Avenue, "H" Street and "I" Street in Chula Vista, California; this order and preliminary injunction shall not apply to the public sidewalks on 5th Avenue, "H" Street and "I" Street which are adjacent to the private property of plaintiff.

Dated this 21 day of November, 1973.

/s/ J. A. Kilgarif
Judge of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

* * (Caption—347511) * *

ORDER GRANTING PRELIMINARY INJUNCTION

The above matter came on regularly for hearing on November 16, 1973 in Department 6 of the above entitled Court pursuant to an order to show cause why a preliminary injunction should not issue. Gray, Cary, Ames & Frye, by David B. Geerdes, appeared as counsel for plaintiff, and Brundage, Williams & Zellman, by Thomas B. Manning, appeared as counsel for defendant, San Diego County District Council of Carpenters.

On proof being made to the satisfaction of the Court, and good cause appearing therefore;

IT IS HEREBY ORDERED that during the pendency of this action, or until the final determination thereof, or until the Court shall otherwise order, defendant, and each of them, their officers, agents, representatives, members, and all others acting for, on behalf of, or in concert with them, or any of them, and their attorneys, shall be, and hereby are enjoined and restrained from causing, instigating, furthering, participating in, or carrying on picketing on the plaintiff's property located at 555 5th Avenue, Chula Vista, California, which property is bounded by and adjacent to public sidewalks on 5th Avenue, "H" Street and "I" Street in Chula Vista, California; this order and preliminary injunction shall not apply to the public sidewalks on 5th Avenue, "H" Street and "I" Street which are adjacent to the private property of plaintiff.

IT IS FURTHER ORDERED that a preliminary injunction be issued as hereinabove set forth, upon plaintiff's filing and undertaking in due form, to be approved by this Court, in the sum of \$1,000.00.

Dated this 21 day of November, 1973.

/s/ J. A. Kilgarif
Judge of the Superior Court

Reporter's Transcript of January 4, 1974, at pages 14-16. [14] . . . which I addressed myself and which are relevant.

With regard to the Penal Code provision, I did mention that since it is relied upon as legislative support for the Court's decision in the *Schwartz-Torrance Investment Corporation* case.

I can't think of any other matter.

THE COURT: The first question in my mind was the first problem, and that is it's preempted by the NLRB. If that is true, why don't you invoke the powers of the NLRB by putting the matter in their hands, if it is so preempted?

MR. WILLIAMS: There is no way of doing that, your Honor.

THE COURT: Then who acts? If the NLRB cannot act, why can't this Court act? This is the problem. You tell me that it's preempted but now you tell me they cannot act. The question is if they can't act, who does act?

MR. WILLIAMS: Well, —

THE COURT: And I am not talking about the merits; I am merely talking about jurisdiction.

MR. WILLIAMS: Yes, your Honor.

THE COURT: I would agree with you if this were a situation where you could take this case and say, all right, this is the NLRB and then let them handle the merits of the case. That would be one thing. But you tell me we can't go to the NLRB, you have no jurisdiction. Therefore, nobody has anything that can be done about it. Is this what [15] you are telling me?

MR. WILLIAMS: Yes, your Honor. I am saying there is no case, there is no cause of action, that a union has a right to picket as the California Supreme Court has indicated and the employer has the right to resist that picketing.

THE COURT: I am talking about jurisdiction. I am talking about your first point. As I understand your point, the issue in this case is without the jurisdiction of this Court because the subject matter is preempted by the NLRB legislation; is that correct?

MR. WILLIAMS: No, not quite, your Honor.

I am saying that the National Labor Relations Act, supplemented by the amendatory Labor Management Relations Act, says that labor organizations have the right to picket, to engage in concerted activities, and that those rights shall not be infringed. That does not mean that we can ask the National Labor Relations Board to come into this court and resolve the injunction. We have to address ourselves to that, and that is why we are here.

THE COURT: Where does that touch the jurisdiction of the Court? I may be bound by what the National Labor Relations Act provides and its amendments, but as far as the power of the Court to act—and this is what you are challenging when you say the jurisdiction I suppose. I am wondering about that.

[16] MR. WILLIAMS: Yes.

The Supreme Court of the United States ultimately held in *Garmon I* and *Garmon II*, and we have cited *Garmon II*—this was the second case, 359 U. S.—ultimately held that both State and Federal Courts are without jurisdiction to act when we are dealing with rights such as picketing arguably protected by Section 7. That does not mean that the Labor Board must act or it will act. It certainly means there is no jurisdiction in either State or Federal Courts.

Was there any other question?

THE COURT: No, that was the only problem I had in my mind.

The matter will be deemed submitted.

MR. SMITH: Your Honor, could I make one short comment on the record?

The question of jurisdiction does come up by implication in the *Schwartz-Torrance* case. It's a shopping center admittedly, but nowhere in that decision does the Supreme Court of this State have any problem of jurisdiction to decide the constitutional merits. I could not make that representation with *Logan Valley* because they specifically omitted to consider that.

THE COURT: I want to review the *Central Hardware* case and also the *Garmon* case primarily before making a ruling.

(Court adjourned in this matter.)